

NOTICES OF AGENCY GUIDANCE DOCUMENTS

The Administrative Procedure Act requires the publication of guidance documents and substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)). Substantive policy statements and guidance documents are written expressions which inform the general public of an agency's current approach to rule or regulation practice. Substantive policy statements and agency guidance documents do not include internal procedural documents which may only affect the internal procedures of the agency and do not impose additional requirements or penalties on regulated parties in accordance with A.R.S. Title 41.

NOTICE OF AGENCY GUIDANCE DOCUMENT

OFFICE OF PEST MANAGEMENT

[M13-276]

1. Title of the guidance document and the guidance document number by which the document is referenced:

GD 13-01 Devices

2. Date of the publication of the guidance document and the effective date of the document if different from the publication date:

Publication Date: September 13, 2013

3. Summary of the contents of the guidance document:

"Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling or mitigating any pest or other form of plant or animal life. A.R.S. § 32-2301(10). The use of a device "for the purpose of eliminating, exterminating, controlling or preventing infestations" is considered engaging in the "business of pest management." A.R.S. § 32-2301(4). Similarly, "pest management services" includes "the use of devices not exempt by section 32-2304, subsection B, paragraph 18 for the purpose of eliminating, exterminating, controlling or preventing infestations." A.R.S. § 32-2301(24). In addition, OPM has the authority to monitor compliance by a person with OPM's statutes and rules while the person is providing pest management services. A.R.S. § 32-2304(D).

Normally, a person needs a business license and a qualifying party to engage in the business of pest management. A.R.S. §§ 32-2313(A) & 32-2314(A); see also A.R.S. § 32-2325(A)(1)-(2); A.A.C. R4-29-201(A)-(B). Additionally, an applicator for a business licensee or political subdivision needs certification to provide pest management services. A.R.S. § 32-2311.01(C) (political subdivisions); A.A.C. R4-29-201(C) (businesses). In other words, a person using a "device" must generally comply with the licensing, certification, and registration requirements of OPM's statutes and rules.

However, the director has authority to "designate by rule devices that are exempt from the licensure, certification and registration requirements." A.R.S. § 32-2304(B)(18); see also A.R.S. § 32-2311(A)(6) (licensing and registration do not apply to a person using a device covered by A.R.S. § 32-2304(B)(18)). Pursuant to this authority, the director has established A.A.C. R4-29-304, which provides:

A. The following devices are not subject to the licensure and registration requirements of this Chapter or the OPM's statutes:

1. Physical barriers used to remove or prevent infestation by pests;
2. Equipment used for the physical removal of pests or the habitat of pests;
3. Mechanical equipment used for the physical removal of weeds and other vegetation;
4. Mechanical traps used without a pesticide;
5. Installation equipment used for home improvement or modifications;
6. Raptors used to control or relocate other birds; and
7. Fire arms.

B. An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase "Not a licensed pest control company" in all written and oral advertisements.

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Some examples of the devices covered by rule 304(A) are screens, garden hoes, shovels, rakes, bird spikes, tweezers, and caulking.

The effect of A.R.S. § 32-2304(B)(18) and rule 304(A) is that an individual does not need to be certified or registered as an applicator, be supervised by a qualifying party, or have a business license in order to use a device listed in rule 304(A). As a result, this individual does not have to pass an OPM exam or pay licensing fees.

This does not mean, however, that this same individual is free from following OPM's other statutes and rules. This individual is still subject to OPM monitoring under A.R.S. § 32-2304(D). This individual also cannot misuse a device listed in rule 304(A). See A.A.C. R4-29-301(B)(1)-(2) (requiring use, handling, storage, and disposal of devices and wearing of PPE according to the label). Moreover, rule 304(B) requires this individual to include the phrase "Not a licensed pest control company" in the individual's advertisements. If the individual violates OPM's statutes or rules, OPM may impose a civil penalty against the individual and seek injunctive relief. See A.R.S. §§ 32-2321(A)(5), 32-2325(B)(1) and 32-2327.

Importantly, rule 304 has perhaps no practical application to applicators who use pesticides or devices not covered by rule 304 in addition to using devices covered by rule 304. To use pesticides or devices not covered by rule 304, the applicator will need to be certified (except for the first 90 days) and registered, supervised by a qualifying party, and working for a business licensee or political subdivision.

There may be individuals whose work is entirely covered by rule 304(A), but who do not wish to state "Not a licensed pest control company" in advertisements as required by rule 304(B). Those individuals may go through the same licensing requirements that other companies do in order to become a licensed pest control company, complete with a qualifying party and certified and registered applicators.

4. Statement as to whether the guidance document is a new statement or a revision:

New

5. The agency contact person who can answer questions and comments about the agency guidance document:

Name: Jack Peterson
Address: 1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-3575
E-mail: jpeterson@azda.gov

6. Information about where a person may obtain a copy of the guidance document and the costs for obtaining the guidance document:

A person may obtain a copy of the guidance document from the person listed in item 5 or from the OPM's web site at <http://www.sb.state.az.us>. The policy statement is free, though the OPM may charge for any applicable postage.

NOTICE OF AGENCY GUIDANCE DOCUMENT

OFFICE OF PEST MANAGEMENT

[M13-277]

1. Title of the guidance document and the guidance document number by which the document is referenced:

GD 13-02 Applicator Registration

2. Date of the publication of the guidance document and the effective date of the document if different from the publication date:

Publication Date: September 13, 2013

3. Summary of the contents of the guidance document:

Applicators must be certified and registered, unless exempt.

Certification requires the applicator to pass a category-specific examination. An applicator may work for a business licensee or political subdivision for 90 days without certification.

Registration, on the other hand, does not require an examination and has no 90-day exception. Applicators for a business licensee or political subdivision must be registered by that business licensee or political subdivision before doing any applications. Applicator registration is valid from the date OPM receives all the information required under rule 207(B) and the registration fee. The fee does not apply to political subdivisions.

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A business licensee faces a \$150 penalty for each unregistered applicator working for the business.

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